IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO.1549 OF 2003.

The State of Maharashtra : Appellant.

versus

Sadashiv Vishnu Sutar & ors : Respondents.

Mr.D.R.More, APP, for the State.

Mr.P.D.Dalvi for Respondent Nos. 1 to 3.

CORAM : D.G.DESHPANDE,J.

DATED : 2nd September 2004.

ORAL ORDER

1. This is an appeal filed by the State against acquittal of the accused under Section 3(i)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, under Section 7(i)(d) of the Protection of Civil Rights Act, 1955 and under Sections 323, 504, 506 r/w 34 of the Indian Penal Code.

2. The case of the prosecution was that complainant Manohar Gundu Yadav and the persons belonging to the S.C. S.T are residing at Gadbidri, Tal.Bhudargad, Dist.Kolhapur. He along with this members of S.c.S.T. sent a proposal for Vikas Seva Society and Milk Business Society. Similarly a proposal was sent by the accused Mahadev and his party. Therefore, there were admittedly verbal clashes between two groups.

3. Phone belonging to Grampanchayat Gadbidri was installed in the house of accused Sadashiv. On 27.02.2003 at about 07.30 the complainant and one Nandkumar Kerba Gadkar were alleged to have gone to the house of the accused. The complainant and Nandkumar told the accused that they had to make a phone call and at this juncture the accused was alleged to have abused them with reference to their caste. Hearing the shouting other accused came there and they also gave similar abuses and gave them a threat to kill. In the mean time P.W.4 also came there. In this background a complaint was lodged by the complainant on 28.02.2003. But he did not make any mention that he was abused with reference to

his caste. On 3.3.2003 the complainant (PW1) went to Bhudargad police station and lodged the complaint. Witnesses were examined. But the trial Court acquitted the accused because there was admission by the complainant that on the ground of proposed society dispute was going on between scheduled caste persons on one side and the accused persons on the other side. The Court found that in the first complainant dated 28.2.2003 there is no mention that the accused persons abused them on their caste. This was also admitted by Head Constable (PW6). Therefore, the Court came to the conclusion that no such incident as is alleged in the second complaint took place on 27.2.2003. Therefore, admittedly, the complaint dated 3.3.2003 was an afterthought and, the court was rightly not inclined to rely ;upon the evidence of PW.1. So far as giving abuses to PW.3 with reference to his caste, the court said that he has not lodged any complaint to the police and, there was no plausible evidence in that regard. Nandkumar (PW3) was, admittedly, the friend of the complainant (PW1) and, therefore, his evidence was not found worthy of acceptance.

4. Thereafter there was evidence of P.W.4 who stated that he was going to his field at the relevant time. He heard quarrel . His presence at the time was found doubtful by the court because of important omissions in this regard. There were inconsistencies in the statements of P.W.3 and P.W.5 about the presence of P.W.4. Even about the incident of assault no evidence worthy of credence was found. In fact, if admittedly, there was enmity between the parties, then the complainant should have been diligent to narrate to the police the abuses given to him or to P.W.3 with reference to their caste. But absence of the same and delay in the report materially affects the credibility of the case and, therefore, in the background of the matter, the judgment of acquittal is not liable to be interfered with. Hence the appeal is dismissed.

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